



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The decision in the principal case would seem to be based upon a misconception of the meaning of the phrase "preservation of property," as used in the cases. As applied to the facts of the cases from which the court assumes to draw the doctrine announced in the principal case, the preservation of property, to which the courts refer, evidently means its preservation from destruction or dissipation, and not from the claims of a mortgagee. An examination of the cases cited leads to the conclusion that the decision in the principal case finds little support in reason, and none in authority.

D. L. W.

THE FEDERAL CONSTITUTION IS NOT VIOLATED BY A STATE LAW COMPELLING ONE ACCUSED OF CRIME TO TESTIFY AGAINST HIMSELF.—At first sight this proposition seems a little startling, but a careful consideration of the opinion of Mr. Justice MOODY in the recent case of *Twining et al. v. The State of New Jersey*, 29 Sup. Ct. R. 14, probably will satisfy most readers that it is sound.

The plaintiffs in error were convicted of a criminal offense in the trial court, the judgment of conviction was affirmed in the court of errors and appeals of New Jersey, and they assign for error that by the mode of proceedings adopted at the trial they were denied the right of an accused person not to be compelled to testify against himself, which they maintain is a right secured to them by the Constitution of the United States.

On the trial the accused called no witnesses, nor did they themselves testify, although the law of the state gave them the right to do so. The law of New Jersey permitted an unfavorable inference against the accused to be drawn by the jury from their failure to testify in denial of the evidence which tended to incriminate them, and the trial court in substance so instructed the jury. Assuming that what was done at the trial was an infringement of the privilege against self-incrimination—though not deciding this point—the court proceeds to examine the question whether such a law violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States or by depriving persons of their life, liberty or property without due process of law.

Admitting that much might be said in favor of the view that the privilege was guaranteed against state impairment as a privilege and immunity of national citizenship, Mr. Justice MOODY shows that the decisions of the Supreme Court have foreclosed that view.

It was not argued by plaintiffs in error that they are protected by that part of the 5th Amendment which provides that no "person * * * shall be compelled in any criminal case to be a witness against himself," for they recognize that the first ten Amendments are not operative on the states, but they do contend that this privilege is one of the fundamental rights of national citizenship, placed under national protection by the 14th Amendment, and that the "privileges and immunities of citizens of the United States" protected against state action by this Amendment include those fundamental personal rights which were protected against national action by the first

eight Amendments. These contentions, Mr. Justice MOODY holds, are answered by the decisions of the Supreme Court: that the distinction between national and state citizenship and their respective privileges drawn in the *Slaughter-House Cases*, 16 Wall. 36, has come to be firmly established: that "if, then, it be assumed, without deciding the point, that an exemption from compulsory self-incrimination is what is described as a fundamental right belonging to all who live under a free government, and incapable of impairment by legislation or judicial decision, it is, so far as the states are concerned, a fundamental right inherent in state citizenship, and is a privilege or immunity of that citizenship only": that the contention that the safeguards of personal rights which are enumerated in the first eight articles of Amendment, though they were by those Amendments originally secured only against national action, are among the privileges and immunities of citizens of the United States and protected against state action by the 14th Amendment, while supported by weighty arguments (see the opinions of Mr. Justice FIELD in *O'Neil v. Vermont*, 144 U. S. 323, 361, and of Mr. Justice HARLAN in *Maxwell v. Dow*, 176 U. S. 581, 606) is no longer open, it having been definitely settled that "the 14th Amendment did not forbid the states to abridge the personal rights enumerated in the first eight Amendments, because those rights were not within the meaning of the clause 'privileges and immunities of citizens of the United States.'"

It is held further that this exemption from compulsory self-incrimination is not required by due process of law. It is clear as matter of history that the practice of compulsory self-incrimination existed for centuries after Magna Charta (WIGMORE, EVIDENCE, § 2250), and by an historical survey the opinion in this case shows that during the time when the meaning of due process was in a formative state the exemption from compulsory self-incrimination was not considered to be inherent in due process of law, but, on the other hand, a right independent and outside of due process. "Even if," the opinion concludes, "the historical meaning of due process of law and the decisions of this court did not exclude the privilege from it, it would be going far to rate it as an immutable principle of justice which is the inalienable possession of every citizen of a free government. Salutory as the principle may seem to the great majority, it cannot be ranked with the right to hearing before condemnation, the immunity from arbitrary power not acting by general laws, and the inviolability of private property. The wisdom of the exemption has never been universally assented to since the days of Bentham, many doubt it today, and it is best defended not as an unchangeable principle of universal justice, but as a law proved by experience to be expedient. See WIGMORE, EVIDENCE, § 2251. * * * The states had guarded the privilege to the satisfaction of their own people up to the adoption of the 14th Amendment. No reason is perceived why they cannot continue to do so."

In dissenting, Mr. Justice HARLAN affirms that no former decision of the Supreme Court requires the present decision: a view somewhat inconsistent with his opinion in *Maxwell v. Dow*, 176 U. S., at page 615. He

quotes from Mr. Justice BRADLEY's opinion in *Boyd v. United States*, 116 U. S. 616, 631, 633, that "any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom."

Nevertheless, it may still be true that there are very important personal rights, those named, for example, in the first eight Amendments, that are not necessarily "privileges and immunities of citizens of the United States" within the meaning of the 14th Amendment. *Marxwell v. Dow*, 176 U. S. 581.

TRANSFER OF NEGOTIABLE INSTRUMENT WITHOUT ENDORSEMENT.—A case has been recently decided by the Supreme Court of Colorado, upon a condition of facts which it seems, has not an exact parallel in any of the reports. After being in litigation for more than eleven years the question involved was finally settled by the court of last resort of that state. In effect the decision goes to the extent of saying, that when a note is endorsed specially and afterwards comes back to the party making such special endorsement, and the party reissues the same without striking out his endorsement, no new endorsement is necessary, since the special feature is obliterated by the reissue. In legal effect it is considered as a general endorsement or an endorsement in blank.

The case was one of some importance. A mining company made its note for \$5,000, payable to its president, who by proper endorsement passed title in it to the First National Bank of Ouray. The bank endorsed it specially as follows: "Pay to the Order of L. L. Bailey, First National Bank of Ouray, by A. G. Siddons, Cashier." The note was subsequently endorsed back to the bank by L. L. Bailey. Suit was commenced by L. L. Bailey against the mining company. There was no defense to the action, but before judgment was taken negotiations were begun between Bailey, representing the bank and the city of Ouray, for a trade or exchange of the note by the bank for certain of its certificates of deposit which the city held, in all to the amount of \$5,000, these certificates representing sums which the city had on deposit with the bank. The exchange was consummated, the city giving up the certificates for the note, with the bank's endorsement remaining thereon. The complaint alleged that the bank, as a part of the consideration, agreed with the city that the bank's endorsement theretofore placed upon the note should constitute and be in lieu of a new endorsement, and that the bank would be liable to the city as an endorser, without other or further endorsement being made by it. Bailey took judgment against the maker of the note and assigned the same to the city. The judgment secured in that suit was worthless. The maker was insolvent and shortly after the bank also ceased to be a going concern and the co-defendants, three partners, entered into an agreement whereby they assumed the indebtedness of the bank, in